

BOARD OF ZONING APPEALS
MINUTES
February 27, 2007

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on February 27, 2007 in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

C. BICKLEY FOSTER, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JOSHUA BLICK arrived at 1:38pm and JUSTIN GRAHAM

Board members absent:

ERMA MARKHAM
JAMES RUANE

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.
SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.
YOLANDA ARBERTHA, Recording Secretary.

FOSTER We will start the Board of Zoning Appeal meeting at 1:32pm. The first item is to approval of minutes for December 19, 2006.

GREENLEE So moved Mr. Chairman.

GRAHAM Seconded.

FOSTER All in favor say aye? All those opposed?

Motion Carries 4-0

FOSTER We have one case today. A ten-foot setback for a church addition on Amidon on case BZA2007-07, Jess we are ready to hear this case.

McNEELY Good afternoon Ladies and Gentlemen. This request is case BZA 2007-07. BACKGROUND: The applicant requests a variance to reduce the front setback from 25 to 15 feet for a church addition in SF-5 zoning. The application area received a variance in 1992 reducing the setback on the southern portion of the site to 15 feet for a building expansion. That variance was subject to a specific site plan, and does not cover the applicant's current expansion request. The applicant now desires to expand the sanctuary building on the site, but is constrained with necessary parking west of the building.

The application area is developed with a church/school complex. All property surrounding the site is zoned SF-5. North, south, and west of the site are single-family residences. All surrounding residences meet or exceed the 25-foot building setback. East of the site is another church and single-family residences. The site is along N Amidon, a four-lane arterial, designated in the 2030 Transportation Plan to remain a four-lane arterial.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5” Single-family residences
SOUTH	“SF-5” Single-family residences
EAST	“SF-5” Church, single-family residences
WEST	“SF-5” Single-family residences

UNIQUENESS: It is staff’s opinion that this property is unique, as the site already has a 15-foot setback on the southern portion. Also, the site is unique in that required parking occupies space east of the desired addition, limiting space on the site for building expansion.

ADJACENT PROPERTY: It staff’s opinion that granting the requested variance would not adversely affect the rights of adjacent property owners. An existing building already has an approved setback reduction to 15 feet. The proposed setback reduction is over 100 feet from the nearest adjacent property, and therefore will not affect visibility from that property.

HARDSHIP: It is staff’s opinion that the strict application of the zoning regulations constitutes an unnecessary hardship upon the applicant, as requiring the applicant to comply with the 25-foot front setback will prevent the applicant from improving the property with no corresponding public benefit.

PUBLIC INTEREST: It is staff’s opinion that the requested variance would not adversely affect the public interest, as the public has an interest in supporting the logical development of institutional properties. The proposed addition would be no closer to the property line than existing buildings on the site, and will not impact the public right-of-way street or sidewalk.

SPIRIT AND INTENT: It is staff’s opinion that granting the requested variance would not be opposed to the general spirit and intent of the zoning regulations, as the primary intent of the front setback is to maintain sufficient separation between the public right-of-way and structures. The requested variance does not negatively impact this intent, as buildings on the site already are within 15 feet of the property line, and the right-of-way will not require expansion according to the 2030 Transportation Plan.

RECOMMENDATION: Staff finds that the requested variance meets the five conditions necessary for a variance. Should the Board concur and determine that all five conditions necessary for a variance exist, the Secretary recommends that the variance to reduce the front setback from 25 to 15 feet be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The setback reduction shall apply only to the “building expansion” as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to

the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.

3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
4. The resolution authorizing this variance may be reviewed for compliance with conditions by the BZA; the board may then make recommendations to staff regarding enforcement of conditions.

McNEELY Are there any questions of staff?

FOSTER The applicant has handed out and additional property description. You have received one right?

McNEELY Yes.

FOSTER Do you know that the difference is or should we ask the applicant?

McNEELY We can ask the applicant. As I understood, it was the West 100 feet of the property.

FOSTER Does this create any problem in the advertisement that was sent out? Do we know that?

McNEELY No, I do not believe so. I would like to hear from Terry the agent for the applicant.

FOSTER We may ask you again. We want to make sure we gave proper identification. This is a very narrow lot; the way this is shown. The idea for submitting this part on the west is that what was used before, in 1992 or what?

McNEELY Yes. The 1992 variance request and application area submitted was for the west 100 feet. It is the same legal description that is before you today. Going with precedent from that previous variance, it is only the west 100 feet of this lot that needs a variance, and the applicant sought to tailor their application area just to the west 100-feet instead of going with the entire ownership.

FOSTER Since it is possible for the building to go east as well, it would have better if there were a wider strip of land or ownership area. It would have been best for a larger area. Are there other members that have questions?

GRAHAM Would the addition require any additional parking stalls? How does this affect the parking?

MCNEELY The parking for public assembly is based on the occupancy of that structure. I am not aware if it is adding any additional seats to the general assembly or

main assembly portion. If they do in fact require more parking spaces and cannot provide them, they can seek an adjustment through staff if their need is less than 25%. If they require greater than 25% from zoning code requirements, it will come back before this board for a variance. The applicant has hired an agent and they have looked through their issues so I will assume they do not require a reduction in parking as well.

GRAHAM Okay.

FOSTER Jess, is the transportation staff satisfied that there will not be any additional right a way needed for Amidon there?

McNEELY Yes, the 2030 Transportation Plan keeps Amidon in the same lane configuration that it currently is, a four lane paved arterial. They are not anticipating a right-of-way increase or widening of this street.

FOSTER If no other questions? Thank you, Jess. We will call on the applicant and ask him to identify himself then we will hear anyone else that wishes to speak.

Good afternoon, I am Terry Smythe with Baughman Company. I am the applicant's agent. The Architect for this church addition has indicated no need for additional parking. There is enough room within their ownership that if they want to add additional parking they have the ability. I believe there isn't any issue, if additional parking became required. The hand out that I gave you with the legal description indicates our original request went from here all they way up to the north end of the property. When I was able to get the architect's actual expansion plans, I came back and revised the legal description to just this piece of property, from this driveway down to this driveway. What you have in front of you is a reduction of the request for the setback variance. Technically, we have a smaller request; there will not be any issues with notification not being correct.

FOSTER It meets the notification qualifications then.

SMYTHE I will stand for any other questions.

FOSTER What is the expansion for since it is not for seats.

SMYTHE What the architect indicated to me, part of it is the vestibule. The front part of the church and what occurs behind the altar for more room. If you saw some of the descriptions in the photographs, you saw what appeared as two parallel sidewalks, one right along the right-of-way is pretty straight, and the sidewalk right here which is a city sidewalk. The school is here and the church is here. The children walk along the sidewalk when a school event is put on here. They do not want the children to walk through the parking lot. They are providing their own sidewalk so the children can walk from the school to the front door of the church without walking through the parking lot. Did that answer your question?

FOSTER Thank you. Is there anything else that you want to present?

SMYTHE No.

FOSTER Are you in agreement with the conditions?

SMYTHE Yes, we are.

FOSTER Members do you have any questions of Mr. Smith? Okay.

SMYTHE Thank you.

FOSTER Do we have anyone in the audience that would like to speak regarding this?
Bob Shreck, our distinguished member from the DAB VI is checking me out because I am on that same group with him. Jess, do you have any else?

McNEELY No, we have established that the applicant's proposed legal description is a reduction from the original application legal description. They are applying this to a smaller area than what was applied for or notified. Essentially, they over notified for this request and we do not have a problem with it.

FOSTER Are there any other questions for the applicant or Jess? Okay. I will contain the discussion to the Board. I would like to point out two things. May I see that last slide? Frankly, I was a little thrown off here by the width of the property. I saw that as a hardship not realizing that they had that much more in back of the property. On this drawing, I would note that the area to the north. There is a rectory that is set further back from where it is now. The only person they are really harming, if they are harming anyone, is himself or herself. This is a very wide street and I thought about changing the description for that but the description does say all houses are over a hundred feet away. Do the members have any discussions?

FOSTER Do I hear a motion for the case?

GREENLEE I move that the board accept the findings as fact as set forth in the secretary's report and all five conditions set out in section 2.12.590B of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set forth in the secretary's report.

BLICK Seconded

FOSTER All in favor say aye?

Motion carries 5-0

FOSTER Herb is not here today. Does OCI have anything to report?

McNeely They are aware of the meeting, I assume they have nothing to report.

FOSTER Sharon has provided us a memo in regard to a question we had last time. Sharon do you feel a need to call an executive session or discuss it as it is?

DICKGRAFE That would be up to the board. But I will recommend that we go into executive session if the board feels they have something they need to discuss regarding it.

FOSTER Are you all about finished? I am going to suggest that we go into in to executive session?

DICKGRAFE You need to state the purpose and the length of time.

FOSTER I will move to go into executive session for quasi-judicial information on how it will affect our decision making for about 10 minutes.

GREENLEE Seconded

EXECUTIVE SESSION for 10 minutes.

FOSTER Our ten minutes are up and we will resume our BZA hearing, I think we will take out item number 4. I think there is some value here to let them know they have to carry it out and that OCI will enforce these conditions. Do you feel comfortable Jess coming up with another statement that says that these conditions will be or can be enforced by the OCI? How do you feel about that Jess?

McNEELY I think it is a good idea. It meets the intent.

FOSTER I will make a motion to not use condition number 4 and we ask the staff to prepare a general statement of enforcement duties of the conditions by OCI.

DICKGRAFE I will note that you may want it to be broader than that. If at some point OCI will not longer monitor zoning cases, I think you would want it to say OCI, or any implacable department, and or any legal means available to the City because you will have civil remedies to the City of Wichita

GREENLEE Seconded your motion.

FOSTER Move and seconded, is there any further discussions? All in favor say aye. Is that clear Jess?

McNEELY Yes.

FOSTER Do I hear a motion to adjourn?

BLICK Seconded

FOSTER All in favor say aye. Motion carries unanimously.

Adjournment at 2:13PM